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Criminal accountability of United Nations officials and experts on mission

Report of the Sixth Committee

Rapporteur: Mr. Marko **Rakovec** (Slovenia)

I. Introduction

1. The item entitled "Criminal accountability of United Nations officials and experts on mission" was included in the provisional agenda of the sixty-third session of the General Assembly pursuant to Assembly resolution 62/63 of 6 December 2007.

2. At its 2nd plenary meeting, on 19 September 2008, the General Assembly, on the recommendation of the General Committee, decided to include the item in its agenda and to allocate it to the Sixth Committee.

3. The Sixth Committee considered the item at its 5th, 14th, 19th and 26th meetings, on 10, 24 and 29 October and 14 November 2008. The views of the representatives who spoke during the Committee's consideration of the item are reflected in the relevant summary records (A/C.6/63/SR.5, 14, 19 and 26).

4. For its consideration of the item, the Committee had before it the following documents:

(a) Report of the Ad Hoc Committee on criminal accountability of United Nations officials and experts on mission;[1]

(b) Report of the Secretary-General on the criminal accountability of United Nations officials and experts on mission (A/63/260 and Add.1);

(c) Report of the Group of Legal Experts on ensuring the accountability of United Nations staff and experts on mission with respect to criminal acts committed in peacekeeping operations (A/60/980);

[1] *Official Records of the General Assembly, Sixty-third Session, Supplement No. 54* (A/63/54).

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(d) Note by the Secretariat on criminal accountability of United Nations officials and experts on mission (A/62/329).

5. On the recommendation of the Ad Hoc Committee on criminal accountability of United Nations officials and experts on mission, the Sixth Committee, at its 1st meeting, on 6 October, established a Working Group to continue the consideration of the report of the Group of Legal Experts established by the Secretary-General pursuant to resolution 59/300, focusing on its legal aspects, taking into account the views expressed in the Ad Hoc Committee.

6. Also at its 1st meeting, the Sixth Committee elected Ms. Maria Telalian (Greece) as the Chairperson of the Working Group. The Committee also decided to open the Working Group to all States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency. The Working Group held four meetings, on 14, 15 and 17 October.

7. At the 5th meeting, on 10 October, the Chairperson of the Ad Hoc Committee on criminal accountability of United Nations officials and experts on mission introduced the report of the Ad Hoc Committee; and at the 14th meeting, on 24 October, the Chairperson of the Working Group presented an oral report on the work of the Working Group (see A/C.6/63/SR.5 and 14).

II. Consideration of draft resolution A/C.6/63/L.10

8. At the 19th meeting, on 29 October, the representative of Greece, on behalf of the Bureau, introduced a draft resolution entitled "Criminal accountability of United Nations officials and experts on mission" (A/C.6/63/L.10).

9. At its 26th meeting, on 14 November, the Committee adopted draft resolution A/C.6/63/L.10 without a vote (see para. 10).

III. Recommendation of the Sixth Committee

10. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolution:

Criminal accountability of United Nations officials and experts on mission

The General Assembly,

Recalling its resolution 59/281 of 29 March 2005, in which it endorsed the recommendation in paragraph 56 of the report of the Special Committee on Peacekeeping Operations[1] that the Secretary-General make available to the United Nations membership a comprehensive report on the issue of sexual exploitation and abuse in United Nations peacekeeping operations,

Noting that the Secretary-General, on 24 March 2005, transmitted to the President of the General Assembly a report of his Adviser concerning sexual exploitation and abuse by United Nations peacekeeping personnel,[2]

Recalling its resolution 59/300 of 22 June 2005 endorsing the recommendation of the Special Committee on Peacekeeping Operations[3] that a group of legal experts be established to provide advice on the best way to proceed so as to ensure that the original intent of the Charter of the United Nations can be achieved, namely that United Nations staff and experts on mission would never be effectively exempt from the consequences of criminal acts committed at their duty station, nor unjustly penalized without due process,

Recognizing the valuable contribution of United Nations officials and experts on mission towards the fulfilment of the principles and purposes of the Charter,

Reaffirming the need to promote and ensure respect for the principles and rules of international law,

Reaffirming also that the present resolution is without prejudice to the privileges and immunities of United Nations officials and experts on mission and the United Nations under international law,

Reaffirming further the obligation of United Nations officials and experts on mission to respect the national laws of the host State, as well as the right of the host State to exercise, where applicable, its criminal jurisdiction, in accordance with the relevant rules of international law and agreements governing operations of United Nations missions,

Deeply concerned by reports of criminal conduct, and conscious that such conduct, if not investigated and, as appropriate, prosecuted, would create the negative impression that United Nations officials and experts on mission operate with impunity,

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[1] See *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 19* (A/59/19/Rev.1), part one, chap. III, sect. D.

[2] See A/59/710.

[3] See *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 19* (A/59/19/Rev.1), part two, chap. II, sect. N.

Reaffirming the need to ensure that all United Nations officials and experts on mission function in a manner that preserves the image, credibility, impartiality and integrity of the United Nations,

Emphasizing that crimes committed by such persons are unacceptable and have a detrimental effect on the fulfilment of the mandate of the United Nations, in particular with respect to the relations between the United Nations and the local population in the host country,

Conscious of the importance of protecting the rights of victims of criminal conduct, as well as ensuring adequate protection for witnesses, and noting the adoption of its resolution 62/214 of 21 December 2007 on the United Nations Comprehensive Strategy on Assistance and Support to Victims of Sexual Exploitation and Abuse by United Nations Staff and Related Personnel,

Emphasizing the need to enhance international cooperation to ensure the criminal accountability of United Nations officials and experts on mission,

Recalling its resolution 61/29 of 4 December 2006, establishing the Ad Hoc Committee on criminal accountability of United Nations officials and experts on mission,

Having considered the report of the Group of Legal Experts established by the Secretary-General pursuant to resolution 59/300[4] and the report of the Ad Hoc Committee,[5] as well as the note by the Secretariat[6] and the report of the Secretary-General[7] on criminal accountability of United Nations officials and experts on mission,

Recalling its resolution 62/63 of 6 December 2007,

Convinced of the need for the United Nations and its Member States to urgently take strong and effective steps to ensure criminal accountability of United Nations officials and experts on mission in the interest of justice,

1. *Expresses its appreciation* for the work done by the Ad Hoc Committee on criminal accountability of United Nations officials and experts on mission and the Working Group of the Sixth Committee on the same subject;

2. *Strongly urges* States to take all appropriate measures to ensure that crimes by United Nations officials and experts on mission do not go unpunished and that the perpetrators of such crimes are brought to justice, without prejudice to the privileges and immunities of such persons and the United Nations under international law, and in accordance with international human rights standards, including due process;

3. *Strongly urges* all States to consider establishing to the extent that they have not yet done so jurisdiction, particularly over crimes of a serious nature, as known in their existing domestic criminal laws, committed by their nationals while serving as United Nations officials or experts on mission, at least where the conduct as defined in the law of the State establishing jurisdiction also constitutes a crime under the laws of the host State;

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[4] See A/60/980.

[5] *Official Records of the General Assembly, Sixty-third Session, Supplement No. 54* (A/63/54).

[6] A/62/329.

[7] A/63/260 and Add.1.

4. *Encourages* all States to cooperate with each other and with the United Nations in the exchange of information and in facilitating the conduct of investigations and, as appropriate, prosecution of United Nations officials and experts on mission who are alleged to have committed crimes of a serious nature, in accordance with their domestic laws and applicable United Nations rules and regulations, fully respecting due process rights, as well as to consider strengthening the capacities of their national authorities to investigate and prosecute such crimes;

5. *Also encourages* all States:

(a) To afford each other assistance in connection with criminal investigations or criminal or extradition proceedings in respect of crimes of a serious nature committed by United Nations officials or experts on mission, including assistance in obtaining evidence at their disposal in accordance with their domestic law or any treaties or other arrangements on extradition and mutual legal assistance that may exist between them;

(b) In accordance with their domestic law, to explore ways and means of facilitating the possible use of information and material obtained from the United Nations for purposes of criminal proceedings initiated in their territory for the prosecution of crimes of a serious nature committed by United Nations officials and experts on mission, bearing in mind due process considerations;

(c) In accordance with their domestic law, to provide effective protection for victims of, witnesses to, and others who provide information in relation to, crimes of a serious nature alleged to have been committed by United Nations officials and experts on mission and to facilitate access by victims to victim assistance programmes, without prejudice to the rights of the alleged offender, including those relating to due process;

(d) In accordance with their domestic law, to explore ways and means of responding adequately to requests by host States for support and assistance in order to enhance their capacity to conduct effective investigations in respect of crimes of a serious nature alleged to have been committed by United Nations officials and experts on mission;

6. *Requests* the Secretariat to continue to ensure that requests to Member States seeking personnel to serve as experts on mission make States aware of the expectation that persons who serve in that capacity should meet high standards in their conduct and behaviour and are aware that certain conduct may amount to a crime for which they may be held accountable;

7. *Urges* the Secretary-General to continue to take such other practical measures as are within his authority to strengthen existing training on United Nations standards of conduct, including through predeployment and in-mission induction training for United Nations officials and experts on mission;

8. *Decides* that the consideration of the report of the Group of Legal Experts,[4] in particular its legal aspects, taking into account the views of Member States and the information contained in the note by the Secretariat,[6] shall be continued during its sixty-fourth session in the framework of a working group of the Sixth Committee;

9. *Requests* the Secretary-General to bring credible allegations that reveal that a crime may have been committed by United Nations officials and experts on

mission to the attention of the States against whose nationals such allegations are made, and to request from those States an indication of the status of their efforts to investigate and, as appropriate, prosecute crimes of a serious nature, as well as the types of appropriate assistance States may wish to receive from the Secretariat for the purposes of such investigations and prosecutions;

10. *Requests* the United Nations, when its investigations into allegations suggest that crimes of a serious nature may have been committed by United Nations officials or experts on mission, to consider any appropriate measures that may facilitate the possible use of information and material for purposes of criminal proceedings initiated by States, bearing in mind due process considerations;

11. *Encourages* the United Nations, when allegations against United Nations officials and experts on mission are determined by a United Nations administrative investigation to be unfounded, to take appropriate measures, in the interests of the Organization, to restore the credibility and reputation of such officials and experts on mission;

12. *Urges* the United Nations to continue cooperating with States exercising jurisdiction in order to provide them, within the framework of the relevant rules of international law and agreements governing activities of the United Nations, with information and material for purposes of criminal proceedings initiated by States;

13. *Emphasizes* that the United Nations, in accordance with the applicable rules of the Organization, should take no action that would retaliate against or intimidate United Nations officials and experts on mission who report allegations concerning crimes of a serious nature committed by United Nations officials and experts on mission;

14. *Takes note with appreciation* of the information provided by Governments in response to its resolution 62/63;

15. *Requests* the Secretary-General to report to the General Assembly at its sixty-fourth session on the implementation of the present resolution, in particular with respect to paragraphs 3, 5 and 9 above, as well as any practical problems in its implementation, on the basis of information received from Governments and the Secretariat;

16. *Also requests* the Secretary-General to include in the report information on the number and types of credible allegations and any actions taken by the United Nations and its Member States regarding crimes of a serious nature committed by United Nations officials and experts on mission;

17. *Decides* to include in the provisional agenda of its sixty-fourth session the item entitled "Criminal accountability of United Nations officials and experts on mission".